

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 JOY-CHARITY G. O'HALLORAN, } Civil No. 08CV1319 JAH(NLS)
11 Ph.D., LT, CHC, USN, }
12 v. Plaintiff, }
13 DONALD C. WINTER, Secretary of the }
14 Navy, *et al.*, }
15 Defendants. }

16 Plaintiff Joy-Charity G. O'Halloran ("plaintiff"), proceeding *pro se*, has filed a
17 complaint seeking an order for an "immediate" and "emergency injunction" to "stop
18 [plaintiff's] separation" from military active duty. *See* Compl. at 1, 2. Because plaintiff
19 seeks "immediate" and "emergency" relief, this Court deems it appropriate to treat
20 plaintiff's averments as a request for a temporary restraining order pursuant to Rule 65 of
21 the Federal Rules of Civil Procedure. A party seeking injunctive relief under Rule 65 must
22 show either (1) a combination of likelihood of success on the merits and the possibility of
23 irreparable harm, or (2) that serious questions going to the merits are raised and the
24 balance of hardships tips sharply in favor of the moving party. Immigrant Assistance
25 Project of the L.A. County of Fed'n of Labor v. INS, 306 F.3d 842, 873 (9th Cir. 2002);
26 Sun Microsystems, Inc. v. Microsoft Corp., 188 F.3d 1115, 1119 (9th Cir. 1999); Roe v.
27 Anderson, 134 F.3d 1400, 1402 (9th Cir. 1998). "These two formulations represent two
28 points on a sliding scale in which the required degree of irreparable harm increases as the

1 probability of success decreases.”” Roe, 134 F.3d at 1402 (quoting United States v. Nutri-
2 cology, Inc., 982 F.2d 394, 397 (9th Cir. 1992)); *accord* Sun Microsystems, 188 F.3d at
3 1119. “Thus, ‘the greater the relative hardship to the moving party, the less probability
4 of success must be shown.” Sun Microsystems, 188 F.3d at 1119 (quoting Nat'l Ctr. for
5 Immigrants Rights v. INS, 743 F.2d 1365, 1369 (9th Cir. 1984)).

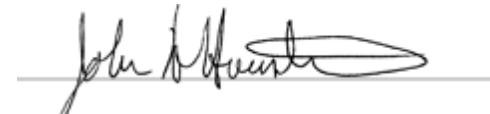
6 Plaintiff is currently an active member of the United States Navy facing transfer to
7 temporary disability retired status on July 24, 2008. *See* Compl., Exh. A at 1. Plaintiff
8 requests this Court issue an order enjoining “the unlawful requirement that [plaintiff]
9 execute military separation orders” that may violate plaintiff’s civil rights. Compl. at 2.
10 However, this Court is mindful that certain military decisions are not subject to judicial
11 review. *See Denton v. Sec’y of the Air Force*, 483 F.2d 21, 24 (9th Cir. 1973). An
12 internal military decision is unreviewable unless the plaintiff alleges (1) a violation of the
13 Constitution, a federal statute, or a military regulation; and (2) exhaustion of available
14 intraservice remedies. If both of these prerequisites are met, the Court then must weigh
15 four factors to determine whether review should be conducted: “(1) the nature and
16 strength of the plaintiff’s claim; (2) the potential injury to the plaintiff if review is denied;
17 (3) the extent to which review would potentially interfere with military functions; and (4)
18 the extent to which military discretion or expertise is involved.” Briggs v. Dalton, 939
19 F.Supp. 753, 758 (D.Haw. 1996)(citing Wallace v. Chappell, 661 F.2d 729, 733 (9th Cir.
20 1981)).

21 This Court finds that plaintiff has failed to meet the initial prerequisite for seeking
22 judicial review, that is, plaintiff has provided no information concerning her exhaustion
23 of available intraservice remedies. In addition, this Court finds plaintiff’s complaint lacks
24 sufficient factual support to allow the Court to properly weigh the applicable factors in
25 determining whether review should be granted in this case. Plaintiff provides insufficient
26 information from which the Court may determine the nature and strength of her claim,
27 the potential interference with military functions this Court’s review might create or
28 whether military discretion or expertise may be involved in the decision-making process.

1 Thus, this Court finds plaintiff has presented insufficient information in her complaint to
2 determine whether her claims are reviewable by this Court. *See Immigrant Assistance*
3 Project, 306 F.3d at 873. Therefore, this Court finds plaintiff has failed to demonstrate
4 a likelihood of success on the merits of her claims or that serious questions going to the
5 merits are raised here. Accordingly, IT IS HEREBY ORDERED that plaintiff's request for
6 an "immediate," "emergency injunction" enjoining the military from releasing plaintiff
7 from active duty, construed as a request for a temporary restraining order pursuant to
8 Rule 65 of the Federal Rules of Civil Procedure, is DENIED.

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10 DATED: July 23, 2008

11 
12 JOHN A. HOUSTON
13 United States District Judge

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